

Company, and Erie Family Life Insurance Company (collectively, “Erie”), and Highmark Inc., HM Insurance Group, Inc., HM Life Insurance Company, Highmark Casualty Insurance Company, and HM Casualty Insurance Company (collectively, “Highmark”).

1. On November 5, 2014, Defendants Erie and Highmark filed their Motion to Dismiss Plaintiffs Intellectual Ventures I LLC and Intellectual Ventures II LLC’s (“IV”) Complaint on, *inter alia*, the ground that the claims of asserted U.S. Patent No. 6,519,581 (“’581 patent”) are not eligible for patent protection under 35 U.S.C. § 101, and are thus invalid. Dkt. 46.

2. On January 23, 2015, Defendants Erie and Highmark filed a Motion for Status Conference, which requested a conference to bring to the Court’s attention an apparent chain-of-title defect in relation to the ’581 patent which would call into question IV’s ownership of the ’581 patent. Dkt. 63.

3. Two status conferences were held on January 27 and January 29, 2015. Dkt. 66-67. On January 30, 2015, the Court continued the hearing and argument on the Defendants’ pending Motion to Dismiss from February 5, 2015, to April 14, 2015, and set a briefing schedule for the Erie and Highmark Defendants’ Motion to Dismiss for Lack of Subject Matter Jurisdiction. Dkt. 68.

4. On February 2, 2015, Defendants’ counsel coordinated with IV’s counsel regarding the deposition of Lisa Benado, the only third party IV identified as relevant to the subject matter jurisdiction issue. Ex. A to the Memorandum in Support of Defendants Motion to Strike the Declaration of Paul Hurley. Defendants’ counsel stated, “We intend to depose Ms. Benardo, based on our understanding that Intellectual Ventures will rely upon her testimony as extrinsic evidence of the meaning of the assignment from AllAdvantage to Alset.” *Id.*

5. In an email to Plaintiffs, Defendants asked if Plaintiffs would be relying on any additional extrinsic evidence. *Id.* (“If there is any additional extrinsic evidence underlying Intellectual Ventures’ contention that it is owner of the ‘581 patent, please let me know as soon as possible, so that we can take any necessary discovery.”)

6. IV’s counsel did not respond to this request.

7. On February 13, 2015, Defendants deposed Lisa Benado, the transcript of which Defendants attached to their Motion to Dismiss. Dkt. 76-12. No additional depositions were conducted by Plaintiffs or Defendants.

8. On February 27, 2015, pursuant to the Court’s briefing schedule, Defendants Erie and Highmark moved to dismiss IV’s infringement claims with respect to the ’581 patent under Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction. Dkt. 74.

9. On March 27, 2015, IV filed their Response to Defendants’ Motion to Dismiss Due to Lack of Subject Matter Jurisdiction. Dkt. 81. For the first time, in its Opposition, IV relied on the testimony of Paul Hurley, co-founder of Alset, Inc. through submission of his declaration. Dkt. 81-2. IV now argues that the Hurley Declaration “confirms the parties intended to transfer” the ’581 patent. Dkt. 81.

10. At no time prior to their filings did IV disclose the identity or testimony of Mr. Hurley. Further, Mr. Hurley purports to testify to the intent of AllAdvantage.com and Sherwood Partners (Dkt. 81-2), two companies for which he has never worked nor had an ownership interest. Therefore, Mr. Hurley’s testimony as to the intent of these parties is hearsay under the Federal Rules of Evidence.

WHEREFORE, Defendants Erie and Highmark now move this Honorable Court to strike the Declaration of Paul Hurley offered by Plaintiffs Intellectual Ventures I LLC and Intellectual

Ventures II LLC as hearsay under Federal Rule of Evidence 801, and to strike statements in the Declaration of Paul Hurley regarding the intent of AllAdvantage and Sherwood as hearsay within hearsay under Federal Rule of Evidence 805. Defendants Erie and Highmark offer as support for this motion the attached Memorandum of Law.

Dated: April 6, 2015

Respectfully submitted,

/s/ Alexander W. Saksen

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion to Dismiss was electronically filed and served via the Court's ECF system on this 6th day of April 2015.

/s/ Alexander W. Saksen
Alexander W. Saksen (PA I.D. 86049)